

ORDINANCE No. 233, SERIES 2003

AN ORDINANCE REPEALING AND REPLACING SECTIONS 37.01 – 37.04 OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES (LMCO) PERTAINING TO A LOCAL BUSINESS PREFERENCE (AS AMENDED).

Sponsored By: Councilman Ken Fleming and Councilman Ron Weston

WHEREAS, the Louisville/Jefferson County Metro Government (Metro Government) recognizes the importance of supporting local businesses to promote a healthy and competitive business climate which benefits the community and its residents; and

WHEREAS, the Metro Government wants to give local businesses every opportunity to succeed in this community.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

Section I: LMCO Sections 37.01 – 37.04 are hereby repealed and replaced as follows:

§ 37.01 DEFINITIONS.

AVAILABLE LOCALLY. A local business is capable of furnishing services in a timely manner, in sufficient quantity, and of a quality substantially the same as similar services available from a non-local business.

LOCAL BUSINESS. A business which:

- (1) has been established in the Louisville Metropolitan Statistical Area, as defined by the United States Census Bureau ("MSA"), for 12 months and has local tax identification numbers, if required, within MSA; and

- (2) has its headquarters located in the Louisville MSA, or has a branch office, which is currently located in the Louisville MSA and has been located in such area for at least seven consecutive years prior to the date of invitation for bid, and either the city and/or the county within the Louisville MSA in which the business is located has a reciprocal ordinance that recognizes other businesses located in cities or counties in the Louisville MSA as a local business for purposes of a procurement preference; and
- (3) utilizes local businesses to furnish at least 50% 75% of the services under a contract pursuant to this Ordinance unless such services are not available locally; and
- (4) is certified by Metro Government pursuant to Section 37.03; and

METRO GOVERNMENT. The Louisville/Jefferson County Metro Government, the Metro Mayor, Metro Council and the agencies or departments of that government, but this term shall not include any other county or constitutional officers or their agencies.

NON LOCAL BUSINESS. A business which is not a local business.

§ 37.02 PREFERENCES FOR LOCAL BUSINESSES.

- (A) The local business preference provided in this Ordinance applies to contracts estimated to be equal to or more than the threshold amount established in KRS Section 67C.119 \$100,000 annually at the time of invitation for bid.
- (B) To enter into a contract that is estimated to be equal to or more than \$100,000 annually with Metro Government pursuant to this Ordinance, a bidder or RFP respondent that uses subcontractors to perform all or part of the work or services

required under the contract must submit a local business utilization plan demonstrating the scope of work or services to be done by local businesses, the amount to be allocated to local businesses to perform work or services, and the local business's name, address and local tax identification number.

~~(C) The bidder or RFP respondent shall not enter into a contract with Metro Government unless that contract provides that only citizens of the United States, legal residents, and individuals legally authorized to work in the United States shall perform the services under that contract or any subcontract under that contract.~~

~~(D) All work to be performed under any contract awarded to a bidder or RFP respondent under this Ordinance must be done within the territorial limits of the United States.~~

(E) If the bid received complies with the requirements of this Ordinance, then the bid price quoted by each bidder or RFP respondent shall be reduced by 5% for the purposes of determining the lowest bid price, or alternatively, 5 points shall be added to the evaluated bid total. All proposals of a bidder or RFP respondent shall be evaluated or recognized and scored according to the specifications as noted in the solicitation.

~~(F) The Metro Government Finance Department shall send notice to the Purchasing Department of the invoices of~~ With the submittal of an invoice for final payment, the bidder or RFP respondent shall submit a report that shows the work or services performed by and amount of dollars allocated to local businesses as described in the utilization plan initially submitted and subsequently amended, if

necessary, with the approval of Metro Government, for that work or services performed under contract for Metro Government. If the report fails to substantially comply with the utilization plan initially submitted and subsequently amended, if necessary, with the approval of Metro Government, by the bidder or RFP respondent, then the bidder or RFP respondent awarded the contract shall be subject to a penalty equal to 5% of the total contract price. Any decision made by the Purchasing Director under this Section of the Ordinance which is adverse to a bidder or RFP respondent who has been awarded a contract with the Metro Government may be reviewed by the Secretary of the Cabinet for Finance and Administration at the request of any such bidder or RFP respondent, provided that a request for review shall be in writing, and shall specify with particularity the grounds for the request. Procedures for conducting any such review shall be within the sole discretion of the Secretary of the Cabinet for Finance and Administration and his/her decision after review shall be final.

- (G) For purposes of determining the amount of the preference to apply to the lowest bid price, or alternatively the evaluated bid total, this Ordinance shall not be combined or accumulated with the following preferences: minimum wage, recycled materials, health insurance, and any other preference, which shall take effect on or after the effective date of this Ordinance.

§ 37.03 CERTIFICATION AS LOCAL BUSINESS; APPLICATION.

- (A) No business shall be considered a local business regarding an invitation for bid unless such business shall have satisfied the requirements as set forth in this Ordinance.

- (B) The Director shall prepare an application form for certification as a local business with said form requesting such information and proof as deemed necessary to qualify the applicant under the terms of this Ordinance.
- (C) A local business shall complete the application form and submit it to the Director prior to the opening of bids of any contract in which the local business desires to be given a preference. The Director shall not award a contract until the business who is seeking to be certified is certified. The Director will make every effort to determine whether a business is certified in a timely and reasonable manner.
- (D) The Director shall examine the application and if necessary may seek additional information or proof to assure that the business is entitled to the preference. The Director shall not grant the certification if any one of the requirements of this Ordinance is not satisfied.
- (E) A bidder or RFP respondent who is denied local business status may petition the Director of Purchasing within five (5) business days of the denial letter date. The petition shall outline the reasons why local business status should be awarded. After a review of the petition, a hearing will be set by the Director of Purchasing who will hear the petition and render a decision upholding or setting aside the initial determination. The Director of Purchasing's decision shall be final.
- (F) Any bidder or RFP respondent may challenge in writing within three (3) business days following the day in which a contract is awarded for a particular project the grant of a local vendor preference to another bidder or RFP respondent pursuant to this Ordinance for such contract. The challenge shall outline the reasons why

the local business preference should not have been awarded. After a review of the challenge, a hearing will be set by the Director of Purchasing who will hear the challenge and render a decision upholding or setting aside the initial determination. The Director of Purchasing's decision shall be final.

(G) If any bidder or RFP respondent is deemed a local business by the Metro Government on the basis of supplying false information, then the bidder or RFP respondent will be subjected to a fine equal to 25% of the total contract price. Any decision made by the Purchasing Director under this Section of the Ordinance which is adverse to a bidder or RFP respondent for local business certification who has been awarded a contract with the Metro Government may be reviewed by the Secretary of the Cabinet for Finance and Administration at the request of any such bidder or RFP respondent for local business certification, provided that a request for review shall be in writing, and shall specify with particularity the grounds for the request. Procedures for conducting any such review shall be within the sole discretion of the Secretary of the Cabinet for Finance and Administration and his/her decision after review shall be final.

§ 37.04 PREPARATION OF RULES AND REGULATIONS; ANNUAL REPORT.

- (A) The Director shall prepare regulations or rules for the purpose of implementing the provisions of this Ordinance.
- (B) The Director shall prepare and submit to the Metro Government on an annual basis a report demonstrating the effect and cost of this Ordinance.

SECTION II: This Ordinance shall take effect upon its passage and approval.

Kathleen J. Herron
Kathleen J. Herron
Metro Council Clerk

Ron Weston
Ron Weston
President of the Council

Jerry E. Abramson at
Jerry E. Abramson
Mayor

12-19-03
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney EPM

BY: W. P. O'Brien
Local vendor preference epm Draft 17 (Passed Committee)

12/17/03 4:25 p.m.

**LOUISVILLE METRO COUNCIL
READ AND PASSED**
December 18, 2003